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examination under § 4.221 or on the failure of a party to respond to interrogatories or requests for admissions under § 4.222; or on the failure of a party to comply with an order of the administrative law judge issued under § 4.223 without, in any of such events, showing an excuse or explanation satisfactory to the administrative law judge for such failure, the administrative law judge may:

(a) Decide the fact or issue relating to the material requested to be produced, or the subject matter of the probable testimony, in accordance with the claims of the other party in interest or in accordance with other evidence available to the administrative law judge; or

(b) Make such other ruling as he determines just and proper.

§ 4.225 Prehearing conference.

The administrative law judge may, upon his own motion or upon the request of any party in interest, call upon the parties to appear for a conference to:

(a) Simplify or clarify the issues;

(b) Obtain stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) Limit the number of expert or other witnesses in avoidance of excessively cumulative evidence;

(d) Effect possible agreement disposing of all or any of the issues in dispute; and

(e) Resolve such other matters as may simplify and shorten the hearing.

HEARINGS

§ 4.230 Administrative law judge; authority and duties.

The authority of the administrative law judge in all hearings in estate proceedings includes, but is not limited to authority:

(a) To administer oaths and affirmations;

(b) To issue subpoenas under the provisions of 25 U.S.C. 374 upon his own initiative or within his discretion upon the request of any party in interest, to any person whose testimony he believes to be material to a hearing.

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Upon the failure or refusal of any person upon whom a subpoena shall have been served to appear at a hearing or to testify, the administrative law judge may file a petition in the appropriate U.S. District Court for the issuance of an order requiring the appearance and testimony of the witness:

(c) To permit any party in interest to cross-examine any witness;

(d) To appoint a guardian ad litem to represent any minor or incompetent party in interest at hearings;

(e) To rule upon offers of proof and receive evidence;

(f) To take and cause depositions to be taken and to determine their scope; and

(g) To otherwise regulate the course of the hearing and the conduct of witnesses, parties in interest, and attorneys at law appearing therein.

[36 FR 7186, Apr. 15, 1971, as amended at 55 FR 43133, Oct. 26, 1990]

§ 4.231 Hearings.

(a) All testimony in Indian probate hearings shall be under oath and shall be taken in public except in those circumstances which in the opinion of the administrative law judge justify all but parties in interest to be excluded from the hearing.

(b) The proceedings of hearings shall be recorded verbatim.

(c) The record shall include a showing of the names of all parties in interest and of attorneys who attended such hearing.

[36 FR 7186, Apr. 15, 1971, as amended at 52 FR 26345, July 14, 1987]

§ 4.232 Evidence; form and admissibility.

(a) Parties in interest may offer at a hearing such relevant evidence as they deem appropriate under the generally accepted rules of evidence of the State in which the evidence is taken, subject to the administrative law judge's supervision as to the extent and manner of presentation of such evidence.

(b) The administrative law judge may admit letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, the weight to be attached to evidence presented in any

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particular form being within the discretion of the administrative law judge, taking into consideration all the circumstances of the particular case.

(c) Stipulations of fact and stipulations of testimony that would be given by witnesses were such witnesses present, agreed upon by the parties in interest, may be used as evidence at the hearing.

(d) The administrative law judge may in any case require evidence in addition to that offered by the parties in interest.

[36 FR 7186, Apr. 15, 1971; 36 FR 7588, Apr. 22, 1971]

§ 4.233 Proof of wills, codicils, and revocations.

(a) *Self-proved wills.* A will executed as provided in §4.260 may, at the time of its execution, be made self-proved, and testimony of the witnesses in the probate thereof may be made unnecessary by the affidavits of the testator and attesting witnesses, made before an officer authorized to administer oaths, such affidavits to be attached to such will and to be in form and contents substantially as follows:

State of _____ ss.
County of _____

I, _____, being first duly sworn, on oath, depose and say: That I am an _____ (enrolled or unenrolled) member of the _____ Tribe of Indians in the State of _____; that on the _____ day of _____, 19____, I requested _____ to prepare a will for me; that the attached will was prepared and I requested _____ and _____ to act as witnesses thereto; that I declared to said witnesses that said instrument was my last will and testament; that I signed said will in the presence of both witnesses and they signed the same as witnesses in my presence and in the presence of each other; that said will was read and explained to me (or read by me), after being prepared and before I signed it and it clearly and accurately expresses my wishes; and that I willingly made and executed said will as my free and voluntary act and deed for the purposes therein expressed.

We, _____ Testator/Testatrix and _____, each being first duly sworn, on oath, depose and state: That on the _____ day of _____, 19____, _____ a member of the _____ Tribe of Indians of the State of _____

_____, published and declared the attached instrument to be his/ her last will and testament, signed the same in the presence of both of us and requested both of us to sign the same as witnesses; that we, in compliance with his/her request, signed the same as witnesses in his/her presence and in the presence of each other; that said testator/testatrix was not acting under duress, menace, fraud, or undue influence of any person, so far as we could ascertain, and in our opinion was mentally capable of disposing of all his/her estate by will.

Witness

Witness

Subscribed and sworn to before me this _____ day of _____, 19____, by _____ testator/testatrix, and by _____ and _____ attesting witnesses.

(Title)

If uncontested, a self-proved will may be approved and distribution ordered thereunder with or without the testimony of any attesting witness.

(b) *Self-proved codicils and revocations.* A codicil to, or a revocation of, a will may be made self-proved in the same manner as provided in paragraph (a) of this section with respect to a will.

(c) *Will contest.* If the approval of a will, codicil thereto, or revocation thereof is contested, the attesting witnesses who are in the reasonable vicinity of the place of hearing and who are of sound mind must be produced and examined. If none of the attesting witnesses resides in the reasonable vicinity of the place of hearing at the time appointed for proving the will, the administrative law judge may admit the testimony of other witnesses to prove the testamentary capacity of the testator and the execution of the will and, as evidence of the execution, the administrative law judge may admit proof of the handwriting of the testator and of the attesting witnesses, or of any of them. The provisions of §4.232 are applicable with respect to remaining issues.

§ 4.234 Witnesses, interpreters, and fees.

Parties in interest who desire a witness to testify or an interpreter to serve at a hearing shall make their own financial and other arrangements